



CHARITY COMMISSION
FOR ENGLAND AND WALES

Mr David Pojur
Assistant Coroner for North Wales
(East and Central)

By email only

Charity Commission
PO Box 211
Bootle
L20 7YX

Date: 17 April 2024

Dear Mr Pojur

Re: Regulation 28 Report to Prevent Future Deaths following inquest into the death of Benjamin Leonard

Introduction

1. I refer to your Report to Prevent Future Deaths ('the Report') dated 22 February 2024 concerning the death of Benjamin Leonard who died on 26 August 2018. I am replying as the Chief Executive Officer of the Charity Commission for England and Wales ('the Commission'). Before responding to the concerns raised in the Report, I would like to express my sincere condolences to Ben's family. The Commission is keen to assure Ben's family and you that the concerns raised are being closely examined as part of our ongoing engagement with The Scout Association ('TSA'), registered charity number 306101.

The role of the Charity Commission

2. The Commission is the registrar and regulator of charities in England and Wales. We are an independent, non-ministerial government department accountable to Parliament. We are also accountable for the exercise of our powers to the First-tier Tribunal and the High Court.
3. As registrar, we are responsible for maintaining an accurate and up-to-date register of charities. This includes determining whether organisations are charitable and

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therefore should be registered, as well as removing those that are no longer considered to be charities, have ceased to exist or do not operate.

4. As a regulator, we regulate both registered charities and charities that are not required to be registered. We operate within a clear legal framework and follow published policies and procedures, ensuring that in making regulatory decisions we are proportionate in our approach.
5. The Commission has regulatory oversight of TSA due to its status as a registered charity. The Scout Councils of Northern Ireland, Scotland and Wales along with Scout Counties, Areas, Regions (Scotland), Districts and Groups, together form the Scout movement in the United Kingdom. The majority of these bodies¹ are autonomous charities affiliated to TSA and also fall under the remit of the Commission.

The Commission's statutory objectives

6. The Commission, through the Charities Act 2011, is charged with delivering five statutory objectives. These are to:
 - a. increase public trust and confidence in charities.
 - b. promote awareness and understanding of the operation of the public benefit requirement.
 - c. promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
 - d. promote the effective use of charitable resources.
 - e. enhance the accountability of charities to donors, beneficiaries and the general public.
7. Although our objectives are wide-ranging, there are limitations to our role as a regulator:
 - we are not a prosecuting authority but a civil regulator. The investigation of alleged criminal offences is the responsibility of law enforcement agencies.

¹ There are approximately 8,000 separate local scout groups. Not all local scout groups are registered charities.

- we ordinarily cannot act as a trustee or be directly involved in the administration of a charity, unless particular circumstances apply. This means we can't tell trustees what decisions to make, although we do seek to provide appropriate and accessible guidance to support them with their decisions to ensure they can comply with their legal duties and responsibilities.
- we also have no power to overturn trustees' decisions if they are lawful and reasonable, even if these decisions may be unpopular. However, where trustees' decisions could result in significant harm, for example loss or damage to a charity's assets including its reputation, which forms part of its property, we can investigate how trustees manage their charity. Where it is necessary, for example if we identify actual or potential misconduct and/or mismanagement, we use our powers as a remedy to improve charity governance and management.

Our regulatory approach

8. We are a risk-led regulator. Being risk-led in our regulation means being proactive in identifying risks and intervening, where possible, to prevent harm before it occurs; addressing harm effectively where it occurs; and focusing our resources effectively on the highest risks. Our [Regulatory and Risk Framework](#) outlines how we operate as a risk-led regulator and, in particular, how we identify and assess risks, how we respond to risks, and how we review and adapt our approach.
9. We seek to hold charities to account to basic standards, and while we ensure concerns are investigated and intentional wrongdoing dealt with, we also focus on supporting trustees in getting things back on track, where possible when they do not go exactly as intended.
10. We put the public interest front and centre of our approach to regulating charities – making sure that the public have the information they need to make informed choices about charities and that they are confident that our approach to regulation is clear and consistent.

Trustee conduct

11. Charity trustees are the people who share ultimate responsibility for governing a charity and directing how it is managed and run. The role of the Commission, as regulator, is to ensure that trustees are actively and effectively managing risks and dealing with harm relating to their charities.

12. When we are considering regulatory action, the conduct and response of the trustees will affect our approach. We will consider whether:

- the trustees have acted honestly and reasonably.
- there are indications that they have been careless or reckless.
- there has been deliberate or wilful wrongdoing.

13. If we are satisfied that the trustees have already taken appropriate steps to address risks or harms, we may decide to take no further action depending on the specific circumstances of the case in question. However, where the nature and level of the risk demands it, we will take action in line with the statutory framework set out in the [Charities Act 2011](#). In our regulatory work, we have a range of possible actions and powers available to us. Parliament has set clear legal tests on when and how these powers can be used.

The Commission's role in terms of safeguarding and child safety

14. The Commission has a key regulatory role in ensuring that trustees comply with their legal duties and responsibilities in managing their charity. In the context of safeguarding and safety, the Commission has an important, but limited, role. Our role is focussed on the conduct of trustees and the steps they take to protect beneficiaries, employees, volunteers and others who come into contact with a charity through its work.

15. We have published guidance to help trustees meet their duties around safeguarding, [Safeguarding for charities and trustees](#). Our guidance sets out that, as part of their duties, trustees must take reasonable steps to protect from harm people who come into contact with their charity – a charity should be a safe and trusted environment.

16. We expect protecting people and safeguarding responsibilities to be governance priorities for all charities and this is a fundamental part of operating as a charity for the public benefit. Any failure by trustees to manage safeguarding / safety risks adequately is a serious regulatory concern to the Commission. We may consider this to be misconduct and/or mismanagement in the administration of the charity. It may also be a breach of trustee duty.

17. The Commission does not have any prosecutorial or criminal law enforcement powers. We are not responsible for dealing with individual incidents of alleged abuse and do not administer safeguarding legislation. Where it is appropriate and necessary, we refer allegations of a criminal nature, or incidences of an individual

being at risk of harm, to the police, local authorities, DBS and other relevant safeguarding agencies.

18. We recognise that the other bodies in receipt of the Report have roles to play in helping to prevent future deaths. Where appropriate, we will liaise with them to ensure that we effectively fulfil our responsibilities to achieve a successful regulatory outcome.

The Commission's response to the Report

19. We have been engaging with TSA on this matter since Ben's tragic death in August 2018. Ben's death was reported promptly to the Commission by the Charity, with TSA submitting a serious incident report on the day of his death.² We subsequently opened a regulatory case and, since then, TSA has provided us with regular updates on significant developments. We continue to have an open case and the matter remains an ongoing, live issue for the Commission.

20. As TSA's regulator, we take very seriously the concerns that you have raised in your Report.

21. We note the various concerns and findings identified in the Report. As set out above the Commission will focus on concerns about the charity governance issues and trustee conduct throughout TSA, in line with the Commission's jurisdiction. Therefore, for example, the Commission can investigate the concerns in the Report about the wider structure of the Scout movement and the risk that there is no robust system in place to make sure that the divisions of the roles between TSA and the individual charities is clearly set out and understood by all concerned. The Commission can also look into past conduct by the trustees and what steps had been, and are being taken, to address all safeguarding and safety concerns set out in the Report and ensure the trustees are meeting their legal duties in governing the TSA and have suitable governance and adequate procedures, including to address your concerns as set out in the Report.

22. Following receipt of the Report, our Director of Regulatory Services requested a meeting with senior personnel at the Charity to discuss TSA's response to the Report.

23. On 19 March 2024, the Commission met with TSA's Chair of trustees, CEO, Executive Director of Operations and Head of Governance. It was apparent from our meeting that TSA considers the matter of Ben's death as one of the utmost

² This was in line with our expectations around reporting serious incidents, set out in our guidance [How to report a serious incident in your charity](#).

seriousness. In addition to the actions TSA confirmed to us it has already taken, TSA has made clear that it intends to make further improvements to safety and risk management in the Scout movement. Following the meeting, we have requested additional information about the actions already taken and TSA's intended next steps, including the anticipated schedule for completion.

24. TSA has assured us it will respond fully to the Report's findings and have committed to sharing its response with the Commission. Its response will be relevant to our decisions about any regulatory action we may consider necessary to assist, or ensure, TSA make the changes that need to be implemented to address the concerns set out in the Report. We will ensure TSA and its affiliated charities are clear on the Commission's view about what improvements are essential and must be made and we will continue to examine the concerns identified.
25. At this stage, we cannot provide a timescale for the likely conclusion of our case. We are continuing to examine the concerns and assess whether the actions already taken by TSA have been appropriate and if the further work to be undertaken is sufficient. We will be meeting with TSA again and, in line with our role and charity law, the Commission will support TSA to continue its vital work to further strengthen safety within the Scout movement and will take further regulatory action if the need arises.
26. We are aware that, following the outcome of the Inquest, there is the possibility of a police investigation. We are in contact with the relevant police force to ensure we are clear on any actions that the police are taking, recognising that police investigations take precedence over any civil action, including our own.
27. We note Ben's family's request for the establishment of a public inquiry into TSA under the Inquiries Act 2005. I can confirm that, as a regulator, the Commission would always cooperate fully with any public inquiry. We also note that you highlight the absence of an external inspection regime for TSA and we would be available to support any further discussion of this by government or others, in the context of the existing charity law regime described above.

Conclusion

28. Thank you for raising these important matters with me. I hope the above response assures you that the Commission is taking appropriate steps to fulfil its regulatory role. Please do not hesitate to contact me should you require any further information about the Commission's response to the Report.

Yours sincerely,



Chief Executive